



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the female Tenant, was done in accordance with section 89 of the *Act*, +served personally by hand at the rental unit on September 30, 2011. The Landlord left the male Tenant's hearing documents with the female Tenant. Based on the aforementioned I find the female Tenant has been sufficiently served notice of this dispute resolution process.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain Orders pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a month to month tenancy agreement that began on December 1, 2006. Rent is payable on the first of each month in the amount of \$695.00 and on November 26, 2006 the Tenants paid \$325.00 as the security deposit.

The Landlord affirmed she has regained possession of the rental unit as the Tenants vacated the unit as of October 4, 2011 leaving the keys inside the rental unit; therefore she was withdrawing her request for an Order of Possession.

The Landlord advised that when the Tenants failed to pay their September 1, 2011 rent a 10 Day Notice to End Tenancy was posted to the Tenants' door on September 2, 2011 at 2:10 p.m. in the presence of a witness. She confirmed a copy of the Notice and proof of service document were provided in her documentary evidence.

The Landlord is still seeking a monetary order for September and October 2011 unpaid rent in the amount of \$1,390.00 (2 x \$695.00) plus \$20.00 per month for late payment fees. The Landlord was not able to provide testimony pertaining to which section in their tenancy agreement provided for late payment fees and the amount provided so she withdrew her request for late payment fees and wished to proceed with their claim for unpaid rent and the filing fee.

They have not been able to re-rent the unit even though the Landlords began to advertise it for rent in mid October, 2011, after removing the debris left behind by the Tenants.

Analysis

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been personally served with the Notice of hearing documents. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the female Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution the monetary claim against the male Tenant is dismissed without leave to reapply.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

The Landlord claims for 2 months of unpaid rent of \$1,390.00 (2 x \$695.00) that was due September 1, 2011 and October 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the last day of each month. As per the aforementioned I find the Landlords have met the burden of proof and I approve their request for a Monetary Order for **\$1,390.00**.

The Landlords have succeeded with their claim; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$1,440.00** (\$1,390.00 + \$50.00). This Order is legally binding and must be served upon the Respondent female Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 28, 2011.

Residential Tenancy Branch